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May 31, 1994

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*NOT ADMITTED IN D.C.

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation on Implementation of
Section 309(j) of the Communications Act:
Competitive Bidding, PP Docket No. 93-253

Dear Mr. Caton,

On May 31, 1994, Henry Coe, President of PlusCom, Inc., and I had separate meetings with Commissioner Susan Ness, Commissioner Rachelle Chong, and Donald Gipps, Deputy Chief, Office of Plans and Policy to discuss PlusCom's views concerning the set-aside of broadband PCS spectrum for the bidding purposes of small businesses, businesses owned by women, business owned by minorities, and rural telephone companies (the "Designated Entity" applicants). This issue is now before the Commission in connection with the Notice of Proposed Rulemaking, 8 FCC Rcd 7635, 7655 ¶ 121 (1993) ("NPRM") and the Second Report and Order in the above-referenced docket, FCC 94-61, at ¶¶ 245-248 (April 20, 1994) ("Second Report and Order"). Therefore, in accordance with Section 1.1206(a)(2) of the Commission's Rules, we hereby submit to you an original and one copy of the views expressed at this meeting, as set forth below.

- PlusCom, Inc. (Personal Link Universal Service Communications) is a new company formed with the intention of entering the broadband PCS licensing process. PlusCom is a privately-owned minority corporation operating under the SBA small business eligibility guidelines. Therefore, PlusCom qualifies to bid for any PCS spectrum set aside for Designated Entity applicants.

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- As the Commission noted in the Second Report and Order at ¶ 227, Congress mandated that the Commission ensure economic opportunity for Designated Entity applicants, 47 U.S.C. § 309(j)(4)(D).
- Although PlusCom supports allocating the entire 120 MHz of broadband PCS on the lower band, PlusCom supports retaining the original division of spectrum into seven bands, that is two 30 MHz bands, one 20 MHz band and four 10 MHz bands.
- PlusCom continues to support the Commission's proposal to set aside two blocks of broadband PCS spectrum nationwide, one of 20 MHz and one of 10 MHz, to be auctioned off only to Designated Entity applicants. NPRM, 8 FCC Rcd at 7635, 7655 ¶¶ 4, 121. Alternatively, the Commission could allocate one 30 MHz block to Designated Entities. The Commission's final decision on this proposal will be addressed in its forthcoming specific Report and Order on auctions of broadband PCS licenses. Second Report and Order at ¶¶ 245-247.
- The Commission's decisions not to set aside spectrum in the IVDS and narrowband PCS auctions should not sway a decision against set-asides for broadband PCS. As the Commission aptly noted, only two IVDS frequency blocks are available per service area, thus, any set-aside gives away too great a proportion of the service's spectrum. Fourth Report and Order, PP Docket No. 93-253, FCC 94-99, at ¶ 37 (May 10, 1994) - ("Fourth Report and Order"). On the other hand, there will be a number of frequency blocks using 120 MHz of spectrum available per market in broadband PCS. Allocating two frequency blocks using a combined total of 30 MHz or one 30 MHz block, which would be equivalent to one quarter of the spectrum, does not give Designated Entities a disproportionate amount of spectrum. Since narrowband PCS licenses involve relatively low capital entry requirements and heavy bidding is not expected, they are expected to be well suited to small entities without the need for set-asides. Cf. Third Report and Order, PP Docket No. 93-253, FCC 94-98, at ¶ 69 (May 10, 1994) ("Third Report and Order"). On the other hand, entry costs for broadband PCS will be much greater, and bidding for broadband PCS licenses is expected to be quite heavy; therefore, Designated Entities will be unable to compete in auctions, even with bidding preferences.
- Entities such as Tier 1 Local Exchange Carriers, Interexchange Carriers, and large cable companies are expected to bid many millions of dollars on PCS licenses. Without some control mechanism, these multi-

billion dollar entities will be able to outbid any and all Designated Entity applicants in any auction.

- License acquisition costs are only a fraction of the network deployment costs. Therefore, a bidding preference is insufficient to give enough economic advantage to a Designated Entity to be able to compete with a large company. Therefore, even if Designated Entities receive a bidding credit of 25%, see Second Report and Order at ¶ 242, the large companies can easily outbid Designated Entities by more than the amount of the preference margin given to a Designated Entity. In effect, a bidding preference is no more than a token gesture that will result in very few, if any, licenses obtained by Designated Entities.
- By setting aside spectrum only for Designated Entity bidders, the Commission will safeguard Designated Entity applicants from having to bid against these entities with far greater resources. Instead, Designated Entity applicants will only bid against one another for spectrum, thereby insuring economic opportunity for Designated Entity applicants, and carrying out the Congressional mandate. 20 MHz is enough spectrum for a Designated Entity because it is sufficiently large to accommodate current equipment designs and microwave clearance concerns.
- PlusCom applauds the FCC's decision to reduce the upfront payment amounts appropriate for auctions of set-aside spectrum from the proposed 2 cents per pop per MHz entry fee for all PCS applicants. Second Report and Order at ¶ 248. In preparation of the Commission's final broadband PCS auction rules, PlusCom proposes that 2/100 of a cent per pop per MHz would be a reasonable entry fee for Designated Entities.
- Because of the high cost of broadband PCS licenses, PlusCom believes that the Commission's general rule allowing small businesses to pay 10% of the winning bid within 5 days of the auction and an additional 10% within 5 days of the grant, with the balance paid in installments beginning in the third year is still too onerous for broadband PCS. Second Report and Order at ¶¶ 236-239. PlusCom supports payment of 5% of the winning bid within 5 days of the auction and an additional 5% within 5 days of the grant. PlusCom also supports interest only for three years with the balance of the principal (80%) paid over the last seven years of the license term. By definition, small businesses have very little capital and will need all their capital for the build out. Therefore, these further refinements will free up capital for Designated Entity build outs of broadband PCS systems.

- Notwithstanding the Commission's decision limiting installment payment plans to small businesses, PlusCom underscores its view that all four Designated Entity categories be allowed to bid for set-aside licenses.
- PlusCom supports the Commission's decision allowing a maximum equity ownership of 49.99 percent by non-Designated Entities in a Designated Entity. Second Report and Order at ¶¶ 277-278. Any larger amount would indeed defeat the Designated Entity set-aside and would end up turning a Designated Entity into a de-facto non-Designated Entity.
- PlusCom also supports the ability of a small business entity to form a consortium with a non-small business entity. As long as the ownership and control is at least 50.1 percent by the small business, the entire entity ought to be treated as a small business. Broadband PCS is so capital intensive that a small business would be unable to participate without such a consortium approach. Therefore, an exception to the general rule is necessary for broadband PCS. Moreover, this approach would encourage investment by larger companies in small business controlled entities, thereby assuring small business participation. Without the consortium approach coupled with a set-aside, there could be no meaningful participation of small businesses in broadband PCS.
- Additionally, PlusCom proposes that the Commission consider easing ownership restrictions for cellular carriers in the event a cellular carrier invests in a broadband PCS Designated Entity in its own market area, and allow that cellular carrier to own up to 49.99% of that Designated Entity, as long as the Designated Entity itself retains control. This win-win arrangement will provide cellular carriers the incentive to invest in Designated Entities, and thus obtain non-controlling interests in additional spectrum in their markets, while providing Designated Entities with a ready source of financing.
- However, the Commission should not change the 40 MHz maximum that can be aggregated in a market between co-owned cellular and PCS licenses. Such a change would serve as a disincentive to cellular carriers to invest in a Designated Entity, since the cellular carrier would then be able to bid on an additional 20 MHz of PCS spectrum on its own, without the need of investing in a Designated Entity.
- PlusCom supports the use of tax certificates in broadband PCS licensing, as the FCC has ordered for IVDS, Fourth Report and Order at ¶¶ 48-52, and

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narrowband PCS, Third Report and Order at ¶¶ 81-85. As the Commission noted, "tax certificates would be useful as a means of creating incentives both for designated entities to attract capital from non-controlling investors and to encourage licensees to assign licenses to designated entities in post-auction transactions." Second Report and Order at ¶ 251. This will ease the capital burden on Designated Entities. In addition, PlusCom believes that the tax credit should be given to the entire licensee entity. This would encourage equity funding of Designated Entities by larger companies.

- PlusCom commends the Commission for considering a recapture provision as a safeguard to deter mere speculators from bidding for Designated Entity set-aside spectrum, and for allowing transfers between Designated Entities without penalty. Second Report and Order at ¶¶ 261-262. PlusCom agrees with the five year "premature" period adopted by the Commission as the appropriate time period for anti-trafficking safeguards.

If the Commission has any questions regarding the information and/or opinions expressed in the above letter, please contact this office.

Respectfully submitted,



Eliot J. Greenwald

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cc: Chairman Reed Hundt
Commissioner Susan Ness
Commissioner Rachelle Chong
Commissioner James Quello
Commissioner Andrew Barrett
Robert Pepper
Donald Gipps
Ralph Haller
Gerald Vaughan
Thomas Stanley
Greg Rosston
Julia Kogan
Geraldine Matise